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October 26, 2009

Reply to White Plains Office

Via UPS Next Day Airsaver

The Honorable Paul A. Crotty, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street, Chambers 735
New York, NY 10007

*The Court directs that all documents
discovery, deposition and requests to admit be
included by December 4, 2009. It is not up to plaintiff
to designate 30(b)(6) witnesses for defendant; but
his Smith has relevant information that may be
admitted. Any other matters
will be resolved at the next conference on
November 18, 2009. So ordered
Paul H. Heston
JD*

Re: Onyemaobi, et al. v. Covenant House, et al., Case No. 09-CV-02434 (PAC)

Dear Judge Crotty:

As Your Honor may recall, our firm represents Defendants Covenant House, Covenant House New York and Covenant House Under 21 (collectively "Defendants") with respect to the above-captioned litigation. We write to the Court at this time in order to respectfully request that the Court So-order a Revised Case Management Plan in this action pursuant to the Court's previous instructions to the parties.

As Your Honor may recall, the Court issued Civil Case Managing Plan and Scheduling Order on June 17, 2009. The initial Case Management Plan and Scheduling Order contemplated the parties finishing written discovery by October 15, 2009.

Subsequently, the parties raised several discovery issues with the Court by letter. The Court held a conference with counsel for the parties on September 24, 2009 regarding these discovery issues. During that conference the Court instructed the parties to confer on, and submit a Revised Case Management Plan to the Court reflecting the additional discovery period requested by Defendants' counsel for third-party discovery; Defendants requested to have this additional time in order to get discovery from Plaintiffs' other employers, as Plaintiffs claimed to have no documents relating to their employment at other institutions contiguous with employment by certain of the Defendants. The Court indicated that the parties would have until the end of November in order to wrap-up fact discovery.

On October 2, 2009, pursuant to the Court's Order, I provided Mr. Wade, Plaintiffs' counsel, with a proposed Revised Case Management Plan. See Exhibit "A", October 2, 2009 letter from John Rosenthal to Locksley Wade. The proposed Revised Case Management Plan provides for written discovery to conclude by November 24, 2009. Mr. Wade did not respond to the proposed Revised Case Management Plan.

MEMO ENDORSED

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On October 5, 2009, Defendants served Rule 45 subpoenas on supposed employers of Plaintiffs: (1) Urban Path Ways, Inc., (2) Steinway Child and Family Services, Inc., and (3) Human Resources for City of New York. Plaintiffs had not provided the identities of their other employers until September 22, 2009 in belated response to Defendants' August 10, 2009 First Set of Interrogatories; to date, Plaintiffs have failed to provide Defendants with all required Rule 33 Verifications for such Interrogatory Responses.

On October 15, 2009, I again wrote to Mr. Wade requesting his consent to the proposed Revised Case Management Plan. See Exhibit "B", October 15, 2009 letter from John Rosenthal to Locksley Wade. Mr. Wade again failed to respond.

On October 20, 2009, I again wrote to Mr. Wade regarding the proposed Revised Case Management Plan. See Exhibit "C", letter from John Rosenthal to Locksley Wade.

Mr. Wade finally responded to my requests regarding the proposed Revised Case Management Plan on October 22, 2009 by facsimile; almost a month after the conference with the Court, and three (3) weeks after my initial request to meet and confer regarding the proposed Revised Case Management Plan. See Exhibit "D", letter from Locksley Wade to John Rosenthal. In his letter, Mr. Wade refuses to approve the plan, or meet and confer about the proposed Revised Plan unless and until Defendants produce Ms. Valerie Smith for deposition on October 28, 2009. I had previously informed Mr. Wade at least three (3) times, that as Plaintiffs had never served Defendants with a proper Rule 30(b)(6) Notice for deposition, and because Ms. Smith is not an officer, director or managing agent of Defendants, Defendants would not be producing Ms. Smith for deposition as Plaintiffs' Rule 30(a) Deposition Notice for Ms. Smith is invalid and a nullity. I called Mr. Wade on October 23, 2009 to confer in good faith about the outstanding discovery issues, including the proposed Plan, but my call was not returned.

I would respectfully request at this time, that the Court So-Order Defendants' proposed Revised Case Management Plan attached hereto. The Court will note that Defendants' present proposed Revised Plan extends the fact discovery deadline until December 4, 2009. Defendants respectfully request this limited additional time in order to account for the Thanksgiving Holidays, and for the time lost by Defendants in discovery due to Mr. Wade's failure to engage in timely, good faith discovery discussions with Defendants' counsel. Defendants also respectfully request this limited additional time in order to allow Defendants to pursue additional third-party discovery of Plaintiffs' other, contiguous employers; it has come to Defendants' attention that Plaintiffs' Responses to Defendants' written discovery demands regarding other employers and searches for new employment have not been entirely accurate, and Defendants need additional time to track down other third-party employers and related documents.

We thank the Court in advance for its time, patience and consideration in this matter.

Respectfully submitted,


John T.A. Rosenthal

Encl.

cc: Locksley O. Wade, Esq. - *Via UPS Next Day Airsaver*